

DEPARTMENT OF INDUSTRIAL RELATIONS

INDUSTRIAL MEDICAL COUNCIL

P. O. Box 8888

San Francisco, CA 94128

Tel. No.: (650) 737-2700 or 1-(800) 794-6900 Fax No.: (650) 737-2711

**Title 8. Industrial Medical Council****Notice of Proposed Rulemaking**

The Industrial Medical Council ("IMC") proposed to adopt the proposed regulations described below after considering all comments, objections and recommendations regarding the proposed action.

Proposed Regulatory Action

The IMC proposes to amend section 46.1 in Title 8 of the California Code of Regulations (CCR). This section governs the conduct of medical-legal examinations of the foot and ankle.

Public Hearing

The IMC will hold one public hearings on the adoption of Industrial Medical Council regulations relating to the evaluation of injuries to the foot and ankle applicable to all physicians performing medical-legal evaluations in the workers' compensation system.

These hearings, will be on the following date at the following location:

Day: July 18, 2002
Time: 1:00 pm to 3:00pm
Place: Ramada Inn
245 S. Airport Blvd.
S. San Francisco, CA 94080

At the hearing, any person may present statements or arguments orally or in writing to the proposed action described in the informative digest. It is requested but not required that anyone wishing to make public comment at the hearing submit comments in writing to the IMC before the date of the hearing.

All written comments should be mailed to James D. Fisher, Esq., P.O. Box 8888 San Francisco, CA 94128. The IMC must be receive comments by no later than 5:00 p.m., July 18, 2002 or may be submitted at the public hearing by close of session. The IMC will

accept comments by fax be at (650) 737-2989. The IMC will also accept comments by electronic mail at IMCrules@dir.ca.gov.

Authority and Reference

The IMC is undertaking this regulatory action under the authority conferred in Labor Code sections 139, 139.2 and 5307.4. Reference is to Labor Code sections 139, 139.2, 4060, 4061, 4061.5 and 4062.

Statement of Necessity

The IMC has determined that the proposed regulations are necessary to the effectiveness of the operation of the QME evaluation process. Labor Code section 139.2 (j) (2) mandates adoption of these regulations by the IMC.

Informative Digest

The IMC proposes to adopt specified administrative regulations governing the requirements for the conduct of medical-legal examinations of the foot and ankle in the workers' compensation system.

The Council oversees the medical aspects of the California Workers' Compensation system and appoints physicians as Qualified Medical Evaluators to perform medical-legal evaluations of injured workers. Labor Code section 139.2 (j)(2) requires the Industrial Medical Council (IMC) to promulgate rules and regulations concerning "procedures to be followed by all physicians in evaluating the existence and extent of permanent impairment and limitations resulting from an injury." The IMC has previously adopted evaluation protocols concerning various parts of the body. The purpose of these proposed rules is fulfilling the IMC's mandate by issuing evaluation protocols covering examinations of the foot and ankle.

Consideration of Alternatives

The IMC must determine that there are no alternatives to the proposed regulation that would be more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons than the proposed regulations.

The IMC invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearings or during the written comment period.

Costs to Local Agencies and School Districts

The IMC has determined that the regulations will involve no additional costs or savings to any local agency or school district because no new programs are mandated by these regulations.

Impact on Housing Costs

The proposed regulations will not affect housing costs.

Cost or Savings in Federal Funding to The State

None. The proposed regulations will not affect any Federal funding to the state of California.

Costs or Savings to State Agencies

The proposed regulations will not impose costs on state agencies. Any such costs are non-reimbursable, however, since the requirement that employers contribute to the funding of California's workers' compensation programs is not unique to state agencies and applies to all employers alike, both public and private.

Potential Cost impact on Private persons or businesses directly effected

The IMC has determined that the proposed regulations may have an insignificant impact on private persons or businesses directly effected by the regulation.

Significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states

The IMC has made an initial determination that these regulations will not have a significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states. These proposed regulations govern the conduct of medical examinations that are already required by the California workers' compensation law. Labor Code §§4060-4068. These regulations do not require the use of any new procedures in these medical examinations. Rather, the regulations specify the substance of the physical examination performed on injured workers who have work related foot and ankle injuries and the content of the medical report required by the Workers' Compensation Appeals Board. 8 Cal. Code of Regs. § 10606.

Assessment of Effects on Job and/or Business Creation, Elimination or Expansion.

The IMC has determined that these regulations will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing jobs within the State of California, or the expansion of existing businesses within the State of California.

Other Non Discretionary Costs or Savings imposed on Local Agencies

None. There are no non-discretionary costs or savings.

Impact on Small Businesses

The IMC believes that these regulations will affect some small businesses. The regulations will affect businesses that involve physicians who perform medical

examinations to determine the existence and extent of permanent impairments and limitations resulting from a foot or ankle injury must use this protocol. Labor Code § 139.2 (j)(2). During the performance of medical examinations of the foot and ankle, physicians will have to comply with the proposed regulations.

Plain English Requirements Concerning Small Businesses

The Council has determined that it is not feasible to draft the regulations in plain English due to the technical nature of the regulations; however, a noncontrolling plain English summary of the regulations are available from the agency contact person named in this notice.

Contact Persons and the Availability of Statement of Reasons and Text of Proposed Regulations

You may obtain the text of the proposed regulations upon request from the IMC. A statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the IMC. The rulemaking file is available for public inspection. Please direct requests for copies of the proposed text

of the regulation, the initial statement of reasons, the modified text of the regulation, if any upon which the rulemaking is based to:

Annadesa Gregorio (650) 737-2034
James Fisher, Esq. (650) 737-2049
Department of Industrial Relations
Industrial Medical Council
395 Oyster Point Blvd., Ste. 102
South San Francisco, CA 94080

Inquiries concerning the substance of the proposed action may be directed to:

James D. Fisher, Esq (650) 737-2049
Anne Searcy, M.D. (650) 737-2006
Department of Industrial Relations
Industrial Medical Council
395 Oyster Point Blvd., Ste. 102
South San Francisco, CA 94080

Availability of Changed or Modified Text

After holding the hearings and considering all timely and relevant comments received, the IMC may adopt the proposed regulations substantially as described in this notice. If the IMC makes modifications that are sufficiently related to the originally proposed text, the IMC will make the modified text with the changes clearly indicated available to the public. The text will be available for at least 15 days before the IMC adopts the regulations as revised. Please send requests for copies of any modified regulations to

the attention of Annadesa Gregorio at the address indicated above. The IMC will accept written comments on the modified regulations for 15 days after the date the text is made available.

Final Statement of Reasons

Upon written or e-mail request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Written requests for the final statement of reasons should be directed to the contact persons listed above.

Automatic Mailing

The IMC will automatically send a copy of this Notice, including the Informative Digest, to those interested persons on the IMC's mailing list. When adopted, the regulations as amended will appear at California Code of Regulations at Title 8, Sections 46.1.

Web Access

A copy of this Notice, the Initial Statement of Reasons, and the Text of the proposed regulations can be obtained at the IMC's website at <http://www.dir.ca.gov/IMC/imchp.html>. On the left side of the page, you will see a link to "Proposed Regulations." Click on the link and you will be taken to the page containing the proposed regulation in this Notice. Alternatively, a copy of this Notice, the Initial Statement of Reasons, and the Text of the proposed regulations can be obtained at the website of the Department of Industrial Relations at <http://www.dir.ca.gov/>. In the middle of the page you will see a link "Rulemaking—Proposed Regulations." Click on the link and you will be taken to the page containing the proposed regulation in this Notice.